

DEPARTMENT OF INSURANCE

Legal Division, Special Projects Bureau

**MEMORANDUM**

TO: Certain Interested and Affected Parties
FROM: Gene S. Woo
45 Fremont Street, 24th Floor
Tel: 415-538-4496 / Fax: 415-904-5729
DATE: March 24, 2005
RE: Workshops

Pursuant to California Government Code Section 11346.45, California Insurance Commissioner John Garamendi will hold prenotice public discussions regarding contemplated amendments to California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 8, Section 2698.95, *et seq.* (the "Disability Insurance Assessment Regulation"). Section 1872.85 of the California Insurance Code authorizes the Commissioner to promulgate these regulations. (A copy of the proposed changes to the existing regulation is attached. Additions are indicated by underlining while deletions are indicated by ~~striketrough~~.)

You are hereby invited to participate in these prenotice public discussions. The purpose of these discussions is to permit certain interested and affected persons an opportunity to present statements or comments with respect to the proposed amendments to the Disability Insurance Assessment Regulation. The changes would clarify the treatment of insureds that are covered by a group disability insurance policy and would set out the procedures for filing an application to obtain the grants that are funded by the assessment. The proceeds of such grants would be used to increase investigation and prosecution of fraudulent disability insurance claims. The proposed changes would also institute reporting and accountability requirements for counties that received grants under this program.

Public discussions will be held on the following date, at the times and location specified below:

Date: Thursday, April 7, 2005
Location: Hearing Room, 22nd Floor
45 Fremont Street
San Francisco, CA 94105
Time: 1:30 p.m. to 3:30 p.m.

The facility to be used for these public discussions is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the undersigned, by, in order to make special arrangements.

Space is limited so we are asking that you limit your representation to one individual.

Participants should be prepared to present specific comments on, and alternate regulation language for, the proposed amendment to the Disability Insurance Assessment Regulation at these scheduled public discussions.

All persons are invited to submit written statements.

Please be advised that participation in these prenotice discussions will be in addition to, and not in substitution for, any participation in the formal rulemaking process. This invitation to prenotice public discussions does not constitute Notice of Proposed Action under the Administrative Procedure Act. Consequently, comments (oral or written) received in connection with these prenotice discussions will not be included in the rulemaking file, which will not be opened until the time formal notice is issued. Similarly, the Department is not required to respond to comments received before that time. For this reason, if you wish to have comments included in the rulemaking file, or to require the Department to respond to them as part of the process by which it adopts amendments to the Disability Insurance Assessment Regulation, you must present your comments during the formal public comment period according to the procedures outlined in the Notice of Proposed Action at the time that document is issued, regardless of whether the comments have been made in connection with these prenotice public discussions. The Commissioner nonetheless welcomes your participation in these discussions, and hopes that the regulations that subsequently will be proposed can benefit from your input.

All inquiries regarding the contemplated amendments and these public discussions should be directed to the undersigned.

Participants are requested to RSVP by April 5.

Proposed Amendments to Regulation

TITLE 10. Investment

Chapter 5. Insurance Commissioner

Subchapter 9. Insurance Fraud

Article 8. Disability Insurance Assessment

§2698.95. Annual Fee

- (a) Each admitted disability insurer, as provided for by Insurance Code section 1872.85, shall pay an annual fee of ten cents (\$.10) for each insured person that is covered by an individual or group disability insurance policy issued in this state during each calendar year or any part thereof. Such assessment shall also be paid by any other entity, doing business in this state, which is liable for any loss due to health insurance fraud.
- (b) For purposes of group disability insurance policies, an insured person shall be deemed to include any person that is issued an individual certificate of coverage.
- (c) Insurers shall report to the Commissioner by December 31 of each calendar year on the number of insured persons that are covered by an individual or group disability policy.
- (d) The annual fee shall be payable upon presentation of an invoice by the Commissioner. Payment of the annual fee shall be considered delinquent if not paid by the insurer within forty-five (45) days of the invoice date and any amount not paid within this period shall be charged a late fee in accordance with Insurance Code section 12995.

NOTE: Authority cited: Section 1872.85 Insurance Code. Reference: Sections 1872.85 and 12995 Insurance Code.

§2698.95.1. Determination and Criteria for Award of Grants

- (a) In determining to award a grant under this program, the Commissioner shall consider the information provided in an application and may consider the recommendations and advice of the Fraud Division.
- (b) Priority shall be given to those grant applications which, in the determination of the Commissioner, have the potential to have the greatest impact on disability insurance fraud activity.

§2698.96. Application Procedure and Contents

- (a) The Commissioner shall designate a date for the submission of an application requesting grant funding under this program. Notice of the date for submission shall be mailed to each

district attorney at least 60 days before the date set for submission of an application.
Applications received after the date set for submission will not be considered for funding.

(b) An application shall include:

(1) A description of the disability insurance fraud problem in the county, including how it arose, why it is important, its unique aspects, if any, and what is needed to resolve the problem, including supporting data, evidence, or indicators of fraudulent activity related to disability insurance.

(2) The proposed use of the moneys and the anticipated outcome. Such proposed use and anticipated outcomes shall include details of the following items:

A. Personnel costs including salaries and benefits.

B. Operations expenses, including space, equipment, travel and other expenses in support of the program.

C. The number of investigations initiated or coordinated with other law enforcement agencies involving disability insurance fraud.

D. The number of arrests and convictions involving disability insurance fraud.

E. The number of indictments or complaints involving disability insurance fraud.

F. A comparison of the amounts originally claimed in cases determined to be fraudulent compared to payments actually made.

G. The total amount expended to support the district attorney's investigation and prosecution of disability insurance fraud.

(3) A detailed program strategy for the use of the moneys. Such strategy shall include the following factors:

A. Outreach. A description of the manner in which the district attorney will develop his or her caseload, the source(s) for referrals for cases for investigation or prosecution, whether directly from the Fraud Division or from other law enforcement agencies and/or insurers.

B. Personnel. Justification for the number of personnel, position titles and position justification of personnel which will be funded fully or in part through grant funds, including descriptions of the qualifications of personnel to be assigned to the program and an organization chart identifying positions to be funded.

C. Program Coordination. A description of the manner in which the district attorney plans to coordinate involved sectors, including insurers, medical and legal provider communities, the Fraud Division, local law enforcement and community safety agencies.

D. Management Plan. A detailed plan and schedule of the steps the district attorney will complete in achieving the objectives of the program and a discussion of how the program staff will be organized and what internal quality control and budget monitoring procedures will be employed. This part shall also include how

this program will be integrated with any other anti-fraud program(s) maintained within the district attorney's office.

E. Staff Development. The plan for ongoing training of personnel on the investigation and prosecution of disability insurance fraud. Staff development may be addressed through coordination with the Fraud Division, insurers, or other entities.

(4) An outline of the district attorney's anticipated achievements in the following areas:

A. Estimated number of investigations to be initiated during the grant period, including separate estimate of the number resulting from carryover investigations; and

B. Estimated number of prosecutions to be initiated during the grant period.

(5) A list of all prior cases or projects in the district attorney's jurisdiction that have been funded under the provisions of Insurance Code section 1872.85, and a copy of the final accounting for each case or project. If a case or project is ongoing, the most recent account shall be provided.

(6) A detailed budget for the moneys, including salaries and general expenses, that specifically identifies the purchase or rental cost of equipment or supplies.

NOTE: Authority cited: Section 1872.85 Insurance Code. Reference: Section 1872.85 Insurance Code.

§2698.97. Funding Procedure

(a) Funding of a grant shall be in the form of a grant award agreement. Each applicant whose application has been approved for grant funding shall submit an enabling resolution by the county Board of Supervisors approving and authorizing execution of a grant award agreement.

(b) Distribution of grant award funds shall be on a quarterly basis. Funding and dates of distribution shall be contingent upon the adoption of an annual State Budget Act and the collection of assessments.

(c) Within 60 days after the end of each funding cycle, a grantee shall provide the Department with an estimate of any unexpended and/or unencumbered funds. A grantee who has undertaken investigations and prosecutions which will carry-over into a subsequent funding cycle may carry-over into the subsequent funding cycle distributed but unused funds not exceeding twenty-five percent (25%) of the total funding cycle, which specifies and justifies to the Commissioner how those funds will be used. In the event that, due to extenuating circumstances, distributed funds exceeding twenty-five

percent (25%) of the previous total funding cycle are unused, the Commissioner may consider and approve requests for carry-over of the unused funds to the extent that the grantee provides justification.

NOTE: Authority cited: Section 1872.85 Insurance Code. Reference: Section 1872.85 Insurance Code.

§2698.98. Budget Proposal

The proposed budget forms the basis for program management and audit and must be presented in line-item detail and cover a one year program period from July through June. Annual budget levels shall be included in the Request for Application (RFA). The budget may include a line item for an independent audit to be completed at the end of each annual program period or as specified in the RFA. The district attorney's budget shall include the following:

- (a) Salaries and benefits computed at the county salary and benefit schedule.
- (b) Operation support costs.
 - (1) Estimated costs shall be listed by line item.
 - (2) Itemized costs shall conform to county policy regarding appropriateness of expenses.
 - (3) Allowable costs are those costs incurred in direct support of local program activities, including program related travel, equipment costs proportional to program-related use of the equipment, facilities cost, expert witness fees and audits.
- (c) Indirect costs are those not capable of being assigned to a particular project or program, but necessary to the operation of the organization and the performance of the program. The costs of operating and maintaining facilities, accounting services, and administrative salaries are examples of indirect costs. Indirect costs shall not exceed 10 percent of personnel salaries (excluding benefits and overtime) or 5 percent of total direct program costs (excluding equipment).
- (d) Non-allowable budget items include:
 - (1) Real property purchases and improvements.
 - (2) Aircraft or motor vehicles, except the purchase of motor vehicles which is specifically justified to the Commissioner.
 - (3) Interest payments.
 - (4) Food and beverages, except as purchased in connection with program-related travel. Food and beverages costs shall not exceed the applicant's per diem schedule.
 - (5) Weapons or ammunition unless included as part of a benefit package.

- (e) Program funds must be used to support enhanced investigation and prosecution of insurance fraud and cannot be used to supplant funds which in the absence of program funds would be made available for any portion of the local disability insurance program.
- (f) Budget modifications are allowable so long as they do not change the grant award amount.
- (g) The annual and proposed uses of these funds are subject to full public disclosure.

NOTE: Authority cited: Section 1872.85 Insurance Code. Reference: Section 1872.85 Insurance Code.

§2698.98.1. District Attorney Reporting and Commissioner's Audit

Each district attorney receiving funds pursuant to Section 1872.85 shall submit an annual report to the Commissioner regarding the local program and its accomplishments. Failure to submit the annual report shall affect subsequent funding decisions. The report shall include the following items:

- (a) An expenditure report, which shall include information for the following:
 - (1) Personnel: salaries and benefits.
 - (2) Operations costs breakdown.
 - (3) Explanation of any significant variances from the county's application as approved.
- (b) A financial audit report prepared by an independent, qualified state or local government auditor or independent public accountant licenses by the State of California or the county Auditor Controller. The audit report shall certify that local expenditures were made for the purposes of the program as specified in Section 1872.85 of the Insurance Code, these Regulations, the guidelines in the Request for Application and the county's application.
 - (1) The auditor shall use county policies and procedures as the standard for verifying appropriateness of personnel and support costs.
 - (2) In the event that the program audit is included as part of an organization-wide audit, revenues and expenditures for the local program must be shown separately.
- (c) Except as provided in this section, financial audits under this program shall be performed in accordance with the standards set forth in Government Accounting Standards Revised (August 1999) published by the Controller General of the United States, General Accounting Office. The above General Accounting Standards Revised (1999) are incorporated herein by this reference.
- (d) A Program Report which shall include the following:

- (1) The number of investigations initiated related to disability insurance fraud.
 - (2) The number of arrests related to disability insurance fraud.
 - (3) The number of prosecutions related to disability insurance fraud.
 - (4) The number of convictions related to disability insurance fraud.
 - (5) The dollar savings realized as a result of disability insurance fraud case prosecutions.
 - (6) A summary of the activity directed toward the reduction of disability insurance fraud with the following:
 - A. Fraud Division.
 - B. Insurance companies.
- (e) The deadlines for submissions are as follows:
- (1) Expenditure Reports and Audit reports must be submitted to the Commissioner no later than four (4) months after the close of the program period as specified in the Request for Application. A county may request an extension in the event an organization-wide audit will delay submission of the audit.
 - (2) Program Reports must be submitted to the Commissioner no later than (2) months after the close of the program period as specified in the Request for Application.
- (f) There shall be a grant liquidation period of ninety (90) days following the termination of the program period during which costs incurred but not paid may be paid and deducted from the program budget.
- (g) The Commissioner may perform such additional audits or reviews of any local programs as he or she may deem necessary and shall have access to all working papers, correspondence, or other documents, including audit reports and audit working papers related to the audit report or local program.
- (h) Notwithstanding any other provision of the law, the Commissioner shall perform a fiscal audit of the program administered under this section once every three years. The cost of a fiscal audit shall be shared equally between the Commissioner and the grantee.

NOTE: Authority cited: Section 1872.85 Insurance Code. Reference: Section 1872.85 Insurance Code.